PENNINGTON'S COMPANY LAW. BY R. PENNINGTON. (6th Edition). [London: Butterworths. 1990. xxxii + 802 pp. Softcover: $92.85.]

SINCE the publication of the fifth edition of this leading company law book in 1985, major legislative changes have altered the landscape of English corporate law, namely the Financial Services Act 1986, the Insolvency Act 1986 and the Companies Act 1989.

The author states in his foreword that it was previously possible to cover all the areas traditionally comprised within company law in one volume in sufficient detail to satisfy both students and practitioners. However, because of the recent explosion in this area, the author has decided to deal only with the law relating to the company as a going concern in this volume. Coverage of two important areas of company law, namely, the law relating to insolvent companies (including that relating to receiverships, administration orders and arrangements with creditors) and the law relating to mergers, acquisitions, and reconstructions of companies are therefore omitted in order to keep the size of the book manageable. The author intends to cover the law relating to insolvent companies in a separate work which at the date of this review has been published.

There is of course some overlap between insolvency law and company law proper as examined in "Pennington". Two areas come to mind – the lifting of the corporate veil for wrongful trading and priorities between the different types of charges. Both these areas are well covered in the present text. Whether they will be covered in the text on insolvency remains to be seen since this reviewer has not had the opportunity of reading the text on insolvency.

A quick look through the table of cases shows that there is a reluctance to cite foreign cases – a survey of some 50 cases shows not a single reference to any Commonwealth authority. This is perhaps not as bad a shortcoming as it might appear at first since there is a considerable reluctance to rely on foreign cases in the English company law courts.

One omission not so much of this book but rather in English law seems to be the lack of cases dealing with joint venture companies. It would seem that either joint venture companies are a rarity on the English business scene or that lawyers consider that joint venture companies are no different from other types of companies and the law applicable is identical. One possibility of treating joint venture companies as different while not altering English company law would perhaps be to treat them as incorporated partnerships similar to some of the cases dealing with windings up on the just and equitable ground. The lack of cases in this area is in contrast to the law in New Zealand where in the case of *Berlei Hestia (NZ) Ltd.* v. *Fernyhough*

[1980] 2 N.Z.L.R. 150 the court accepted that joint venture companies are a breed apart – the normal rule in *Barron* v. *Potter* about management power reverting to the members when the directors were deadlocked did not necessarily apply and nominee directors who acted in the interests of their nominators were not to be automatically assumed to be acting in breach of their fiduciary duties. The Australian textbook *Principles of Company Law* by Ford seems to accept this approach as good law in Australia. It remains to be seen whether the Singapore courts will follow this approach. Since the concept of joint venture companies does not seem to have penetrated the conciousness of the English corporate lawyer, there is accordingly no mention of joint venture companies in the book reviewed.

Interesting changes in the law relate to the auditing of companies. English law allows companies to be appointed as auditors. Where the auditors are companies or partnerships, not all the owners (*i.e.,* the members in the case of companies and the partners in the case of partnerships) need to be professionally qualified. However, the rules of the recognised supervisory bodies (for example, the Chartered Association of Certified Accountants) require audit work to be performed by professionally qualified persons. In addition, the auditing entity must be controlled by such persons. These changes are dealt with in "Pennington".

Another interesting development in this area is *Caparo* v. *Dickman* 1990] 1 All E.R. 568 where the firm of Touche Ross (as it was at that time) acting as auditors of a company was sued for negligence by a shareholder who, relying on the audited accounts of that company, had increased his shareholding in that company to control it. It was later discovered that the accounts were incorrect. The House of Lords in a landmark judgment (on a point of law, which assumed that the auditors were in fact negligent in not qualifying the accounts) decided that in normal circumstances, the auditors do not owe a duty of care to individual shareholders, but only to them collectively. The ramifications of this decision are widespread but, unfortunately, the book only deals briefly in three places with the impact of this case. The English newspapers have reported that a recent counter-measure to this case has been that banks and friendly takeover parties, before entering into any transaction in reliance on the accounts, will ask for an express assurance from the auditors as to the accuracy of the accounts. The auditors, if they want to please their clients, would therefore have to comply. The impact of the *Dickman case* has therefore to some extent been negated by these measures. All these points would be highly important to a company law practitioner but are not dealt with here.

In spite of the criticisms, "Pennington" remains this reviewer's leading choice for reference on English company law.

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